

STATE OF MICHIGAN
COURT OF APPEALS

DAISY MCKINNIE,

Plaintiff-Appellant,

V

KEITH ROBERT RAVEL and
ST. JOSEPH MERCY HOSPITAL,

Defendants-Appellees,

and

JOSEPH STABILE,¹

Defendant.

UNPUBLISHED

October 5, 2004

No. 241842

Macomb Circuit Court

LC No. 00-004251-NI

Before: Neff, P.J. and Wilder and Kelly, JJ.

Neff, P.J. (*dissenting*).

I respectfully dissent and would reverse and remand this matter for trial.

As the majority correctly points out, there is no dispute that plaintiff suffered an objectively manifested impairment of an important body function. The question on appeal is whether the consequences of plaintiff's injury affected her general ability to lead a normal life.

The majority opinion narrows the inquiry further, acknowledging that plaintiff "undeniably presented evidence that her injuries and resulting pain have had some effect on her life." *Ante* at 6. While noting that a *serious* effect is not required, the majority seems to conclude that the burden to show an effect above the threshold of *any* effect has not been met. These standards, *serious effect* and *any effect*, are vague, to say the least, *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), notwithstanding. However, vagueness aside, I believe that the record supports the conclusion that plaintiff has clearly shown that the consequences of the injury entitle her to a jury determination of damages for serious impairment of an important body function which has affected her general ability to lead a normal life.

¹ See majority opinion *ante* at 1 n 1.

Medical Evidence

Treating physicians describe plaintiff's injury as a permanent injury of a vital body function and in the serious category of injuries of this type. Further, Dr. Klein observed that, "It [plaintiff's injury] affects much of what should be normal daily activities." On neurological examination, the following was noted:

IMPRESSION:

1. Closed head injury with possible whiplash neck injury with residual left paresthesia and mild left hyperreflexia raising suspicions of possible intracranial focal pathology or upper cervical myelopathy.
2. Residual musculoskeletal pain with *left wrist severe tendinitis*. (Emphasis added.)
3. Chronic headaches in relation to the head injury.

Ability to Lead a Normal Life

Plaintiff has worked as a waitress and hostess to contribute to the support of her family. It hardly seems questionable that the injury as described in the medical reports would impact her ability to work at those jobs that were a financially important part of her normal life. The ability to work at one's usual occupation is a part of the general ability to lead a normal life. I acknowledge the majority's cite to *Kreiner* at n 17 for the proposition that self-imposed restrictions do not establish residual impairment. However, in light of the medical reports in this case, I cannot conclude that plaintiff's inability to work is self-imposed or unsupported by the objective evidence. Moreover, *Kreiner* nowhere *requires* physician-imposed restrictions for a finding of impairment.

Plaintiff is the mother of three young children. It is difficult to imagine that her general ability to lead a normal life as a mother of three young children would not be seriously affected by the injury and the consequential pain and disability she has experienced and plaintiff's deposition testimony supports that conclusion. To conclude otherwise trivializes her role as a wife and mother.

On the record before us, I conclude that a finding that plaintiff has not demonstrated that her general ability to lead a normal life is affected is clear error and summary disposition for defendants should be reversed.

/s/ Janet T. Neff